

1 MICHAEL C. BAUM (SBN 65158)
E-Mail: mbaum@rpblaw.com
2 ANDREW V. JABLON (SBN 199083)
E-Mail: ajablon@rpblaw.com
3 STACEY N. KNOX (SBN 192966)
E-Mail: sknox@rpblaw.com
4 RESCH POLSTER & BERGER LLP
1840 Century Park East, 17th Floor
5 Los Angeles, California 90067
Telephone: 310-277-8300
6 Facsimile: 310-552-3209

7 Attorneys for Plaintiff
Fabric Selection, Inc.

8
9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 FABRIC SELECTION, INC., a
California corporation,

13 Plaintiff,

14 vs.

15 HEMISPHERE WORLDWIDE
16 SALES, INC., a Florida corporation;
SW GROUP, LLC, a New York limited
17 liability company, and DOES 1 through
10, Inclusive,

18 Defendants.
19
20

Case No.

**COMPLAINT FOR:
(1) COPYRIGHT INFRINGEMENT;
AND (2) CONTRIBUTORY
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

21
22 Fabric Selection, Inc. (“**Plaintiff**” or “**Fabric Selection**”) hereby alleges as
23 follows:

24 **PARTIES**

25 1. Plaintiff Fabric Selection is a California corporation organized and
26 existing under the laws of the State of California with its principal place of business
27 located in Los Angeles County.
28

1 2. Plaintiff is informed and believes, and based thereon alleges, that
2 defendant Hemisphere Worldwide Sales, Inc. (“**Hemisphere**”) is a corporation
3 organized and existing under the laws of the State of Florida, doing business
4 nationwide, including in this judicial district. Plaintiff is further informed and
5 believes that Hemisphere a manufacturer, importer and/or wholesaler of apparel in
6 the business of manufacturing and selling garments and apparel to retailers.

7 3. Plaintiff is informed and believes, and based thereon alleges, that
8 defendant SW Group, LLC (“**SW**”) is a limited liability company organized and
9 existing under the laws of the State of New York, doing business nationwide,
10 including within this judicial district. Plaintiff is further informed and believes that
11 SW operates retail stores, including Shoppers World, which are in the business of
12 selling garments, apparel, and other goods to consumers.

13 4. Plaintiff is informed and believes, and based thereon alleges, that
14 defendants DOES 1 through 10, inclusive, have infringed Plaintiff’s Copyrights,
15 have contributed to infringement of Plaintiff’s Copyrights, and/or engaged in one or
16 more of the wrongful practices alleged herein. The true names of DOES 1 through
17 10, inclusive, are presently unknown to Plaintiff, which therefore sues said
18 defendants by such fictitious names and will seek leave to amend this complaint to
19 show their true names and capacities when same have been ascertained.

20 5. Hereinafter defendants Hemisphere, SW, and DOES 1 through 10,
21 inclusive, shall be referred to collectively as “**Defendants.**”

22 **JURISDICTION AND VENUE**

23 6. This action arises under the Copyright Act of 1976, Title 17 U.S.C.
24 §101 *et seq.*

25 7. This Court has federal question jurisdiction under 28 U.S.C. § 1331 and
26 §1338(a).

27 8. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c).
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[illegible]

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Design**Garment**

15. On or around August 24, 2015, Fabric Selection sent cease and desist letters to Hemisphere and SW, demanding that they immediately discontinue their unauthorized manufacture, sale and distribution of the Infringing Goods, and requesting that they provide certain information regarding their manufacture and sale of the Infringing Goods.

16. By Defendants' knowingly unauthorized licensing, manufacture, offering for sale and/or sale of the Infringing Goods, Defendants have infringed on Plaintiff's Copyright in the Design.

17. Plaintiff is without adequate remedy at law to prevent the wrongful acts of Defendants herein set forth, and said acts of Defendants have resulted and will result in irreparable damage to Plaintiff unless Defendants' acts of infringement are enjoined by this Court.

18. Defendants' intentional infringing activities have continued and will continue to the detriment of Plaintiff, and loss and injury to Plaintiff's business in an amount not presently ascertainable, and threaten to increase such loss and injury unless such activities are enjoined by this Court and Defendants are required to recall and destroy all Infringing Goods.

19. By reason of the acts of Defendants alleged herein, Plaintiff has suffered actual damages in an amount subject to proof at trial.

20. Due to Defendants' acts of copyright infringement, Defendants, and each of them, have obtained profits they would not otherwise have realized but for

1 their infringement of the Design. Pursuant to the Copyright Act, Plaintiff is entitled
2 to disgorgement of Defendants' profits attributable to Defendants' infringement of
3 the Design in an amount subject to proof at trial. Plaintiff is further entitled to
4 recover its lost profits by virtue of Defendants' acts of infringement, which are
5 subject to proof at trial.

6 21. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants' acts of infringement as alleged herein were willful and deliberate.
8 Accordingly, in the event that Plaintiff elects statutory damages, Defendants, and
9 each of them, are subject to liability for statutory damages under Section 504(c)(2)
10 of the Copyright Act in the sum of up to one hundred fifty thousand dollars
11 (\$150,000) for each violation.

12 **SECOND CLAIM FOR RELIEF**

13 **(Contributory Copyright Infringement – Against All Defendants)**

14 22. Plaintiff repeats and realleges the allegations contained in paragraphs 1
15 through 21 hereinabove, and incorporates them by reference as if fully set forth
16 herein.

17 23. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants, and each of them, knowingly induced, participated in, aided in, and
19 profited from the illegal reproduction of Plaintiff's Design and/or subsequent sale of
20 the Infringing Goods, as alleged above.

21 24. By Defendants' unauthorized duplication of the Design, and by their
22 offering and accepting for sale and sale of the Infringing Goods, Defendants, and
23 each of them, have infringed Plaintiff's Copyright in the Design.

24 25. Plaintiff is informed and believes, and based thereon alleges, that
25 Defendants' acts of infringement as alleged herein were willful and deliberate.

26 26. By reason of Defendants' acts of contributory copyright infringement
27 as alleged herein, Plaintiff is without adequate remedy at law to prevent the
28 wrongful acts of Defendants herein set forth, and said acts of Defendants have

1 resulted and will result in irreparable damage to Plaintiff unless Defendants' acts of
2 infringement are enjoined by this Court.

3 27. Defendants' infringing activities have continued and will continue to
4 the detriment of Plaintiff and loss and injury to Plaintiff's business in an amount not
5 presently ascertainable, and threaten to increase such loss and injury unless such
6 activities are enjoined by this Court and Defendants are required to recall and
7 destroy all Infringing Goods and designs.

8 28. By reason of the acts of Defendants alleged herein, Plaintiff has
9 suffered actual damages in an amount subject to proof at trial.

10 29. Due to Defendants' acts of contributory copyright infringement,
11 Defendants, and each of them, have obtained profits they would not otherwise have
12 realized but for their infringement of the Design. As such, Plaintiff is entitled to
13 disgorgement of Defendants' profits attributable to Defendants' infringement of the
14 Design in an amount subject to proof at trial. Plaintiff is further entitled to recover
15 its lost profits by virtue of Defendants' acts of infringement, which are subject to
16 proof at trial.

17 30. Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants' acts of infringement as alleged herein were willful and deliberate.
19 Accordingly, in the event that Plaintiff elects statutory damages, Defendants, and
20 each of them, are subject to liability for statutory damages under Section 504(c)(2)
21 of the Copyright Act in the sum of up to one hundred fifty thousand dollars
22 (\$150,000) for each violation.

23 **PRAYER**

24 WHEREFORE, Plaintiff prays for relief against Defendants, and each of
25 them, as follows:

26 1. For a preliminary injunction and a permanent injunction, restraining
27 Defendants and their agents, servants, employees, and all persons acting under, in
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1 concert with, or for them, from using Plaintiff's Design for any purpose, including
2 but not limited to, use of the Design in attempting to sell and/or selling garments.

3 2. For order requiring the recall and destruction of all garments infringing
4 upon the Design.

5 3. Actual damages, plus Defendants' profits attributable to Defendants'
6 infringement of the Design and/or contributory infringement of the Design, in an
7 amount subject to proof at trial; or, if elected, statutory damages as available under
8 the Copyright Act.

9 4. For attorneys' fees where allowed by law.

10 5. For such further and other relief as the Court deems just and proper.

11
12 Dated: October 16, 2015

RESCH POLSTER & BERGER LLP

13
14 Bv: _____/S/
15 ANDREW V. JABLON
16 Attorneys for Plaintiff Fabric Selection,
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Dated: October 20, 2015 RESCH POLSTER & BERGER LLP

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